IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9858 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner
Versus
JAGUBHAI BHANABHAI PATEL & Anr. - Respondents

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Appearance :
RC KODEKAR AGP for Petitioner(s) : 1,
MRS KETTY A MEHTA for Respondent(s) : 1,
MR SAURABH AMIN for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/03/2007

ORAL JUDGMENT

1. Mr.R.C. Kodekar, learned Assistant Government Pleader, for the petitioner, Mrs.Ketty A. Mehta, learned counsel for the respondent No.1 and Mr.Saurabh Amin, learned

counsel for the respondent No.2 are heard.

2. Before I refer to the facts of the case, I must record that present is a case, where, Mrs.Ketty A. Mehta, learned counsel for the respondent No.1 and Mr.Saurabh Amin learned counsel for the respondent No.2, tried their best to mislead this Court by making false statements and misstatements in the Court. With bruised feeling and bleeding heart, I am required to record all what had taken place in the court in presence of Mr.A.J. Patel, Mr.Shital R.Patel, Mr.Dhirendra Mehta, Ms.Neesha Parikh, Dr.Amee Yajnik, learned counsel and each person was listening that how these two advocates, despite repeated warning from the Court, were making false misleading statements to obtain favourable orders.

3. To start, I asked Mr.Amin that whether the order dtd.29/4/1992 (Annexure-B) passed by the Deputy Collector confiscating 17 Acres land in view of the breach of the terms of the allotment order, was ever challenged by the respondent No.2, Mr.Amin said in the open Court that the order was challenged before the Collector, who confirmed it and thereafter, it was challenged before the Secretary, who had set aside the order of confiscation and directed regularization of 32 Acres of land in favour

of the respondent No.2.

4. On the other hand, the record shows that in the year 1996, a notice to show cause was issued and in response to that show cause notice, the parties had appeared before the authority and ultimately on 20/9/1996, order of confiscation of entire land was made,thereafter the appeal was dismissed and in the year 1997, revision filed at the instance of respondent No.1, was allowed. In fact, order dtd.29/4/1992 was not challenged by any respondent.

5. Even after going through the records, Mr.Saurabh Amin, learned counsel for the respondent No.2 did not correct his earlier statement but went on arguing that the respondent No.2 had made an application somewhere in the year 1990 for allotment of the land to the State Government, therefore, they were entitled to the said allotment.

6. I again asked Mr.Amin that applications submitted by the respondent No.1 or by the respondent No.2, if were not considered by the authority before confiscation of 17 Acres of land and if the parties were aggrieved by non-consideration of their application, why did they not challenge the order dtd.29/4/1992 directing confiscation

of 17 Acres of land. It was submitted by Mr.Amin that the Secretary had passed an order after taking into consideration the application made by the respondent No.2.

7. I asked Mr.Amin, learned counsel for the respondent No.2 that if the order dtd.29/4/1992 was not challenged by the respondent No.2 or order dtd.20/9/1996 passed by the Deputy Collector confiscating further 15 Acres of land, was not challenged by the respondent No.2 and challenge in the revision filed by the respondent No.1 was confined to resumption of 78 Acres land only, then, how could the Secretary in his revisional jurisdiction hold that the land be given to the respondent No.2 after taking premium and imposition of fine, Mr.Amin, learned counsel submitted that the facts were brought to the notice of the Secretary and he was entitled to pass such an order.

8. On the other hand, Mrs.Ketty Mehta, learned counsel for the respondent No.1 submitted that the respondent No.1 never challenged the first order directing confiscation of 17 Acres of land or second order directing confiscation of 15 Acres of land, as he was interested in saving 78 Acres land only.

9. I asked Mr.Amin, learned counsel for the respondent No.2

that prior to permission by the competent officer in relation to sale, alienation or transfer, how could the possession of 17 Acres of land be given to the respondent No.2, Mr.Amin, learned counsel submitted that because the respondent No.2 had submitted an application for allotment and had filed an application seeking permission to purchase, they had entered upon the possession. On being pointedly asked that under what authority of law, the respondent No.2 entered upon 17 Acres of land, Mr.Amin, learned counsel conceded that it was illegal act and possession was also illegal. I asked Mr.Amin, learned counsel for the respondent No.2 that on face of the order dtd.29/4/1992 how could the respondent No.1 again sell and hand over possession of 15 Acres land in the year 1996 to the respondent No.2 even without obtaining permission from the competent authority, Mr.Amin learned counsel simply submitted that as the respondent No.2 was in need of the land and they thought that as their application for allotment / permission to transfer was pending and there was very likelihood of post facto sanction, the respondent No.2 took possession of the property. It is not disputed before me that on the said 32 Acres land, respondent No.2 without permission from any

authority or without any title over the property, has raised huge construction.

10.I asked Mrs.Mehta, learned counsel for the respondent No.1 that without permission from the competent authority how could the respondent No.1 part with the possession of 17 Acres of land, her reply was that the land was new tenure and impartiable but was not inalienable, therefore, they could transfer it. On being asked that how could the land of new tenure be divided and part possession be given to somebody she admitted that in view of sec.43 of the Bombay Tenancy and Agricultural Lands Act, action of the respondent No.1 in handing over the possession of 17 Acres of land prior to 1990 was absolutely illegal and bad. When the Court asked her how could further 15 Acres of land be transferred in favour of the respondent No.2, she firstly submitted that there was no sale, but after going thorough the order passed by the Deputy Collector and the authority, she withdrew her submission and stated that 15 Acres of land was also sold was a correct fact. On being asked that if on the first occasion, illegal transfer of 17 Acres of land was not regularized and the land was forfeited, then, why further 15 Acres of land was sold

without permission of the authority, she was absolutely inarticulate and had no reply and simply submitted that it was a wrong committed by the allottee (respondent No.1), however, she submitted that the said 32 Acres of land could not be put to profitable agricultural operations because of the water logging, therefore, the respondent No.1 was entitled to sell the land. On being asked that if this particular parcel of 32 Acres of land was allowed to them for agricultural purposes and if they found that the land was not good for agricultural purposes, instead of selling it, why they did not surrender the land back to the State Government, she simply said that there was nothing wrong in transferring 32 Acres land, if it could not be put to agricultural operations.

11. When I asked her that how could the case of respondent No.2 be taken up for consideration by the Secretary in his revisional jurisdiction in the revision filed by the respondent No.1, she made a bold statement that the respondent No.2 had also filed an appeal before the Collector and a revision before the Secretary. She asked me to refer to page Nos.25 and 32 of the docket, I showed her the cause title of each of the matter, the appeal, before the Collector, was filed by the respondent

No.1 against the State Government and present respondent No.2 was not even joined as party - respondent No.2 in the said appeal before the Collector. This was a deliberate false and misstatement to mislead this Court to obtain a favourable order.

12.I asked her to refer to page No.32 to show me that whether the respondent No.2 was a party appellant in the matter or had filed any other revision, after going through the said cause title and the body of the judgment, she had to swallow her words and this time submitted before the Court that the present respondent No.2 did not file any revision, however, she went on arguing that as the present respondent No.2 was joined as respondent No.2, the Secretary was entitled to pass an order in their favour.

13.I am sorry to record that if senior counsel practicing in this Court for long many years do not understand the distinction between the petitioner, appellant or the respondent, then this Court cannot help them. Before making a statement, a senior counsel or even a junior counsel must verify from the records that the statements made by them are correct and, truthful and , are not based on their impression or otherwise.

14. In the present matter, the conduct of Mrs.Ketty Mehta, learned counsel for the respondent No.1, with due apology to her, was not fare to the Court. At every stage, she was making misstatement and when the Court confronted her with the correct situation, her observations were “Your Lordships is right”. When the Court said that instead of giving a certificate to the Judge that he is right, a counsel must justify her conduct, she made yet another statement that 'the facts appear to be true'. Upto this time, she was not ready and willing to realise her mistake and withdraw all her words or either regret before the Court or say a word of sorry, but when the Court said that this conduct may lead to a notice under Contempt of Courts Act or a notice to the Bar Council to take action against her, then, realising the consequences she said that she was sorry. I am really sorry to record the manner in which Mrs.Ketty Mehta, learned counsel for the respondent No.1 and Mr.Amin learned counsel for the respondent No.2 have conducted themselves.

15. A Court is simply not run by Judges, Court always works with the assistance of the lawyers. Judges are good or bad, if the lawyers consider them to be good or bad. A

Judge can never say that he is good or bad because he is always Judged by the lawyers. Introspection and self assessment is the first requirement for a lawyer, if this is a requirement for a judge. The lawyers when appear in the court, they must be throughly prepared with the matter, they must have their notes with them, they must have their chronological list of dates and events, they must have facts on their fingertips, they must know the law, they must read the law and understand it, so that they can narrate correct facts and explain the law to the Judges, they must be prepared to answer even an inconvenient question, because, a lawyer is not to sail only in the safe water. Judges may have different temperament but the lawyers are supposed to assist the Judge, because they represent the case and cause of a person sitting on the last bench in the Court, specially when such man sitting on the last bench relies upon goodness, fairness, wisdom and understanding of the lawyer. A Judge has to decide the matter in accordance with law so also with the assistance provided to him by the lawyers. If the rotten material is supplied to a judge, he cannot be condemned that he has returned back the rotten material. If lawyer wants a good judgment, the

lawyer must provide good assistance to the Judge. A judge would always be happy in receiving a lawyer who is a good assistance in the court. A Judge may not say that he is sorry, but, in fact, he would be sorry if the lawyer becomes liability in the court.

16. A statement at bar is always to be relied upon. When a lawyer opens his mouth and says that what is what, then a Judge is not required to verify the statement from the records. The Moment a Judge is required to verify the statement from the records to confirm what a counsel says, then, the sense of responsibility and reciprocity are broken. If a Judge does not rely upon the lawyer, but every time verifies the facts from the records, then the lawyer cannot provide any assistance. A lawyer is a gem in the ring of the court and if such a gem is not worth, then such gem would have no value in the Court. On the other hand, lawyers are good jewelers in the Judging the Judges. They have to assist the Judge. The lawyers who make misstatement in the court, who are not ready with the facts of the case, who have not read the law, who have not understood the law and are not in a position to assist the Judge, then such lawyers are really a burden.

17. I am sorry to record all this, but I really have undergone

a great pain.

18.From the facts of the case, it would clearly appear that the land of Survey No.353/A/1 admeasuring 70 Acres and Survey No.434/A/1 admeasuring 40 Acres, in all 110 Acres, was allotted to Hajira Apbal Ganotiya Kheti Sahakari Mandali Limited, Hajira, Taluka Choryasi, District Surat, for agricultural purposes, by document dtd.12/3/1960. The land was new tenure and impartiable. Undisputedly, in view of sec.43 of the Tenancy Act, a new tenure or impartiable estate cannot be transferred, sold or alienated by the holder of the land without the permission of the competent authority. The question of the land being inalienable or alienable would not assume any importance, because, the land of new tenure which is impartiable, cannot be transferred without permission of the competent authority. If the land is alienable then too, the permission is required and if the land of new tenure cannot be transferred, then, again the permission would be required for transferring the land under sec.43 of the Tenancy Act. The arguments of Mrs.Ketty Mehta, learned counsel for the respondent No.1 is based upon the argument which was raised before the subordinate authority. It hardly makes any difference that the land is

alienable or inalienable in a case of application of sec.43 of the Tenancy Act. Undisputedly the land in dispute is new tenure and impartiable, despite this, the respondent No.1 society transferred the possession of 17 Acres of land in favour of the respondent No.2 and the respondent No.2 readily obliged the respondent No.1 in taking the possession and paying money. To be fair to Mr.Amin, learned counsel for the respondent No.2, I must record that much before the allotment of the land, respondent No.2 had applied to the state Government for allotment of 17 Acres long strip of land as they were in need of the same for industrial purposes. It would be fair with the records to note that such allotment was not made and total 110 Acres of land was allotted in favour of the respondent No.1. After handing over the possession to the respondent No.2, the respondent No.1 on 21/6/1990 made an application to the competent authority that they be allowed to transfer and alienate 17 Acres of land from Survey No.353/A/1 in favour of the respondent No.2. On 19/9/1990, respondent No.2 also made an application to the same authority that 17 Acres land be given to them from Survey No.353/A/1.

19.Mr.Amin, learned counsel for the respondent No.2

submits that they had made an application to the State for allotment of the land, this statement either is a statement without reading the brief or is a misstatement to mislead the court, because once the land was already allotted in favour of the respondent No.1, the respondent No.2 could not make an application to the State Government for allotment of the land. In fact, the application was that as the respondent No.2 needed the land, permission be granted for alienation.

20. After hearing the parties, i.e. respondents, vide order dtd.29/4/1992, the Deputy Collector directed confiscation of 17 Acres land holding that there was breach of condition Nos.7 and 8 of the allotment order, it directed to take over the possession of the land. In the year 1992, such an order was passed and the Government, which, otherwise works very swiftly, has not taken the possession of the said land upto the year 1997 i.e. for more than five years, a person in illegal occupation of the property against whom an order of dispossession was also passed, continued in possession, probably because, he was a protected soul or the State was not ready and willing to dispossess him from the property.

21. It has already been noted that the order dtd.29/4/1992,

has not been challenged by anybody till today though Mr.Amin. Learned counsel for the respondent No.2 wanted to submit that the said order was under challenge before the authority, the records, however, would clearly show that the order dtd.29/4/1992 directing confiscation of 17 Acres of land, possession of which was given to the respondent No.2, was never challenged either by the allottee (respondent No.1) or by the respondent No.2 who was in possession. I do not know that why the State and other officers have extended such a helping hand in favour of the respondent No.2. It could be that the respondent No.2 is a big industrial house or there were some other reasons, because, otherwise the State Government is very swift in taking action against the persons who are in illegal occupation of few meters of land, some times, without awaiting the decision from the Court.

22. On face of the order dtd.29/4/1992, where-under 17 Acres of land was confiscated, the respondent No.1 undeterred, undisturbed and unperturbed by anything, considering himself to be above the law or thinking that nobody can bring him to the rule of law, again sold 15 Acres of land in favour of the respondent No.2. This sale

was in the teeth of the order dtd.29/4/1992. The possession was handed over in favour of the respondent No.2. Mr.Amin, learned counsel for the respondent No.2, on being asked that under what authority of law the respondent No.2 could take possession, was unable to say anything, except repeating the very same symphony that the respondent No.2 were anticipating grant of land in their favour under the hands of the State Government. The Court asked him that if the land was already allotted in favour of a third party, how could the Government allot the land in favour of the present respondent No.2, Mr.Amin, learned counsel for the respondent No.2 said that they had bona fide belief that the land could be allotted in favour of the respondent No.2.

23. The findings are that the respondent No.1 was continuing in its illegal activities, the government authorities issued a notice to the respondents to show cause as to why the said 15 Acres of land be not forfeited and the remaining 78 Acres of land be also not confiscated in favour of the State. The notice was issued on 16/8/1996 and the matter was directed to be taken up for consideration on 26/8/1996.

24. Mrs.Ketty Mehta, learned counsel for the respondent

No.1 submitted that no show cause notice was ever issued to the respondent No.1 and the proceedings were absolutely illegal. When she was confronted with the observations made in the order dtd.29/9/1996 passed by the Deputy Collector, she changed her stand and submitted that her argument was that no notice relating to confiscation of 78 Acres of land was ever issued. I am sorry to record that half truth is worse then total lie. One can go for autopsy on a total lie but when a person tells half truth, he can always change his stance and stand and say that the statement made by the person is to be taken in different manner. The argument, in fact, was that no notice at all was issued and later-on it came to be corrected that no notice in relation to 78 Acres of land was issued.

25. The parties submitted before the Deputy Collector that the land in fact was needed by the respondent No.2 for their industrial purposes and as the land was under water logging, it was not good for cultivation, therefore, the land was sold in favour of the respondent No.2 in anticipation of post facto sanction. I think that I would be justified in observing that in this State, people apply for allotment of land either for agricultural purpose, or for

industrial purpose or some other purpose. After the land is allotted in their favour, they would use the land for some time and would, thereafter, make an application for transfer of the land. If such permission is granted, then the land would be sold in the open market at the market rate which notoriously known to everybody is much higher rate touching the sky in comparison to the rate on which the the land was granted by the Government. If particular land is given to a particular person, institution or industrial house for a particular purpose, and in case the purpose is over or the land is not fit for the said purpose, then the land should always be returned back to the Government and such allottee can not be allowed to sell the land in the open market. What was purchased for the songs price cannot be sold at the price of the Orchestra.

26. It is commonly known to everybody that the land for agricultural purpose and industrial purpose are allotted for the songs price, when these parcels of land are not used and are sold in the market, then they obtain price of orchestra. This is regularly happening in this State. I have come across number of cases wherein the permissions have been granted for change of user and alienation. In

case where the Government allots certain land to somebody, then they must have some machinery to check and verify that whether such land is put up for that particular use or the allotment is being abused or misused. In the present matter, out of 110 Acres, almost about 32 Acres of land was transferred by the respondent No.1 in favour of the respondent No.2. The action on the part of the respondents was bad, illegal, contrary to law and amounted to a fraud upon on the law and order of allotment.

27. By order dtd.20/9/1996, the Deputy Collector ordered that 15 Acres of land, which was transferred in favour of the respondent No.2 and remaining 78 Acres of land which was with the respondent No.1, should be confiscated and be resumed back respectively. The order relating to 15 Acres of land, which was ordered to be confiscated, was never challenged by anybody. The respondent No.1 had challenged the order dtd.20/9/1996, so far as it directed resumption of balance 78 Acres of land. Undisputedly, the respondent No.2, who was in possession of 17 Acres of land on an earlier occasion and further 15 Acres of land on later occasion, did not challenge the correctness, validity and propriety of the

order directing confiscation of 32 Acres of land. If such 32 Acres of land was directed to be confiscated and the order of confiscation was never challenged, then, the State authorities were obliged and duty bound to take possession of said 32 Acres of land immediately, but it appears from the records that the State acted hand and glove. Before the courts they would challenge every illegal order passed by the subordinate authorities or tribunal, but they would not take any action in relation to an order which has attained finality. They would always help and oblige those who are in the business of illegal activities. If a person makes an application for allotment of 400 sq.ft. i.e. 40 sq.mtrs. of land for constructing a house, the State after a period of 10 years, would not allot the land and reject the application, but if somebody makes an encroachment on 4000 sq.ft. or 400 sq.mtrs. of land and constructs a house and thereafter makes an application for post facto allotment, the State would readily oblige such person. Is the State conveying a message to the public that it is useless to bank upon the law or act in accordance with law or make an application in accordance with law, because such application would be rejected and if they act illegally, commit trespass and

act in high handed manner and become part of the Mafia, then the State would surrender before them and everything would be offered to them. Government is not supposed to surrender before those who are committing illegal acts.

28. The order passed by the Deputy Collector was confirmed by the Collector on 4/11/1996. From the order at Annexure-D, it does not appear that the respondent No.2 was either party appellant or party respondent. The Collector had dismissed the appeal and the order came to be challenged in revision at the instance of the respondent No.1 only and surprisingly, the respondent No.2 was joined as party respondent. The revision filed by the respondent No.1 was confined to 78 Acres of land only, but the Secretary (Appeals) Revenue Department (Mr.N.C. Dave) took up the matter relating to that 32 Acres of land which were transferred in favour of the respondent No.2. Mr.Amin, learned counsel for the respondent No.2 repeatedly submitted that such observations could always be made by the Secretary in favour of the respondent No.2. On being asked that who offered the jurisdiction upon the Secretary to make such observations, Mr.Amin, learned counsel for the

respondent No.2 submitted that the Government is obliged and required to pass an order in relation to those parcels of land admeasuing 32 Acres of land. His submission was that as the application for allotment at the instance of the respondent No.2 was never decided by any authority, the Secretary (Appeals) was justified in directing the State to take up the issue and decide the matter.

29. Unfortunately, this argument is also misdirected, misconceived and is based on a foundation which was never founded before the subordinate authorities.

30. The respondent No.2 could not make an application to the State Government for allotment of the land, after the land was allotted to the respondent No.1. The respondent Nos.1 and 2 had made separate applications seeking permission to transfer the land. If the permission was not granted and the land was forfeited then it would lead to only conclusion that the application submitted by the respondent No.1, seeking permission to alienate or transfer, was rejected and with a further presumption that once the application of the respondent No.1 was rejected, then, the application of the respondent No.2 stood dismissed.

31. The directions made by the Secretary (Appeals) Revenue Department to oblige the respondent No.2 – Essar Steel Limited are not that the Government should take up the issue for allotting the confiscated land. In fact, the observations are that in relation to 32 Acres land which is needed by the respondent No.2 for their industrial purposes, the land be settled in favour of the respondent No.2 after charging premium and imposition of fine. I am unable to understand that if 32 Acres of land was already confiscated and the order was never challenged by anybody before any higher authority, then how could the Secretary direct that on payment of premium and imposition of fine, the possession of the land should be regularized. The Secretary did not say that the land after forfeiture could be allotted in favour of the respondent No.2.

32. From the order passed by the Learned Secretary (Mr.N.C. Dave) it would clearly appear that he was acting for and on behalf of the respondents, he was not acting as a revisional authority, nor was acting as a Secretary of the Government, nor he was deciding the matter in accordance with law or on the basis of legal issues. The tenor and texture of the order passed by the Secretary

would clearly show that he was bent upon to set aside the order passed by the subordinate authorities and wanted to oblige both the respondents, because the respondent No.1 is a Cooperative Society and the respondent No.2 is a big industrial house.

33. It is also to be noted that the terms of the allotment are that if the land is not put to the use for which it has been allotted or it is alienated without any authority of law, then, the order of allotment itself would become nugatory and the State would be entitled to resume the land and enter upon the land. On the first occasion, 17 Acres of land was transferred by the respondent No.1 in favour of the respondent No.2. The Deputy Collector found that it was an illegal act, despite that, he simply directed confiscation of 17 Acres of land only and did not proceed to confiscate remaining land admeasuring 93 Acres. It appears that non-confiscation of 93 Acres of land strengthened the respondent No.2 in entering into further transaction of sale of 15 Acres of land. Once an order of confiscation was already made, then it should have worked as an eye opener for the respondents. The respondent No.2 should have applied for grant of permission to purchase and the respondent No.1 should

have applied for permission to sell the land. Unfortunately, each of the respondent being above law, did not make such application and entered into the transaction of sale of 15 Acres of land. The argument of the learned counsel for the respondents is that all this was bona fide. Unfortunately, in this case, the word “bona-fide” has lost its bona-fides and its bona-fide meaning. Each and every act which is illegal, contrary to law is in the teeth of the earlier order, is now presented before this court with a sugarcoating submitting that it was a bona-fide act. How can one say that it was bona-fide act, if they knew that the earlier act of the similar kind was held to be illegal and the parties had suffered confiscation of 17 Acres of land. If 17 Acres of land was confiscated because of the breach of the terms of the allotment order and Sec.43 of the Tenancy Act, then, at least this time the parties should not have entered into agreement in relation to 15 Acres of land.

34. In the present case, Bona-fides are absolutely lacking, there are no bona-fides. In fact, the action was calculated attempt with ulterior motive to transfer 15 Acres of land in favour of the respondent No.2.

35. Once it is found by the authority that the respondent

No.1 was not deterring from committing nefarious activities, then, the final order could only be confiscation of remaining 78 Acres of land. A novel argument has been raised by Mrs.Ketty Mehta, learned counsel for the respondent No.1 that if the State wanted to forfeit remaining 78 Acres of land, then, notice ought to have been issued to the members who were allotted parcels of land by the respondent No.1. The learned counsel for the respondent No.1 while raising this argument, forgets that all such persons in occupation, are members of the respondent No.1 and the respondent No.1 being a Cooperative Society is representing the interest of all. If the respondent No.1 represented the interest of all at the time of allotment, then, it cannot be denied that they could represent the interest of all at the time of confiscation. In any case, if a notice was issued to the respondent No.1 then, any person or member, if was aggrieved by issuance of show cause notice, then, such person could always join the respondent No.1 and challenge the proceedings and the show cause notice.

36. The authorities have found that the respondent No.1, in transferring two parcels of land i.e. 17 Acres on first occasion and 15 Acres on later occasion, had committed

breach of law and also violated the conditions of the allotment order and if such were the findings, then, the remaining 78 Acres of land could always be confiscated. The Secretary in his zeal to help and oblige the respondents, did not enter into legal issues, nor appreciated the facts which were floating on the surface of the records nor considered earlier conduct of the parties. The facts are that 110 Acres land was allotted to the respondent Society and without permission, 17 Acres and 15 Acres land was transferred, proper notice was issued, the parties were heard and thereafter only a final order was passed. It was submitted before the Secretary that as the respondent No.2 was always ready and willing to pay premium and fine, an order of confiscation should not have been made. The Secretary did not appreciate that the first order of confiscation in relation to 17 Acres of land was made in the year 1992 and that order was not challenged by anybody. Assuming for a minute that the Secretary had jurisdiction to set aside the confiscation of 15 Acres of land at the instance of the respondent No.2 before him though the respondent No.2 did not challenge the confiscation order before any appellate authority, how could the Secretary exercise his powers in relation to 17

Acres which was confiscated in the year 1992. It is further to be seen that the Secretary has relied more on the oral submissions then the records. The respondent No.2 submitted that they had made an application for allotment of the land, the Secretary did not appreciate that the application was not granted and the land came to be allotted to the respondent No.1. He recorded that the orders passed by the subordinate authorities were bad, but he does not give reasons. He simply recorded that without permission 17 Acres of land was sold by the respondent No.1 in favour of the respondent No.2 somewhere in the year 1991-92, but he conveniently closes his eyes to the fact that confiscation of 17 Acres of land was never challenged by anybody. He had observed that the respondent No.1 – cooperative society did commit breach of condition because the society without permission of the competent authority had sold the land in favour of the respondent No.2, but he still holds that such action should not come in the way of the respondents. He had observed that the land was obtained by the Company / respondent No.2 and the fact remains undisputed that such land was transferred without the permission of the authorities. But without assigning any

reason, the Secretary firstly says that the said 32 Acres land which is in possession of the respondent No.2, should be regularized in favour of the respondent No.2, I fail to understand that who conferred such jurisdiction upon the Secretary in a case like this when he holds that the transfer of 32 Acres of land on two occasions was bad, and was contrary to law, and was in violation of the terms of the allotment order. The Secretary in his zeal to pass the order, did not appreciate that the order directing confiscation of 17 Acres and 15 Acres of land were never challenged by the respondent No.2 either by filing an appeal or revision, the respondent No.2 was not joined as party respondent before the Collector and was simply joined as respondent before the Secretary. It appears that his joinder as respondent No.2 before the Secretary was with the ulterior motive and for a particular purpose so that in the revision filed by the respondent No.1, some relief could be granted to the respondent No.2.

37.I am not required to tell the Government authorities that if an order is not challenged within the period of limitation before the competent authority, tribunal, court etc. then such order would attain finality and all the concerned

would be bound by it. If the order attains finality, then, in collateral proceedings such an order cannot be set aside. Such an order which has attained finality, has to be given its full effect. In the present case, unfortunately, a person who could not appreciate law, was hearing the revision and made mess of the matter. I am unable to hold that the Secretary was entitled to make such an order in favour of the respondent No.2.

38. The observations made in last para of the judgment dtd.19/3/1996 are set aside holding that these are patently without jurisdiction and run contrary to law and common understanding of ordinary man. So far as the directions made in favour of the respondent No.1 are concerned, the same also cannot be allowed to stand because, if the remaining 78 Acres of land is allowed to continue in possession of the respondent No.1, then, it would be adding premium to the illegal acts of the respondent No.1. One could understand that after suffering first order of 1992, the respondent No.1 did not enter into any illegal activity, therefore, the respondent No.1 could hold the remaining land, but in the present case, the respondent No.1 even after suffering first order of 1992, again sold the land. It would be clear from their

conduct that they were not caring for anything and were thinking that so long as they are protected by the respondent No.2, they would not suffer any loss or damage.

39. Order dtd.19/3/1997 passed in Revision Application No.SRD/Land/Surat/13/96 by the Secretary (Appeals), Revenue Department is hereby quashed and set aside.

40. Let a copy of this order be sent to the Chief Secretary so that they may know that how their officers are acting and in what manner land belonging to the State Government is handled or mishandled. It is expected of the State Government that instead of giving extra long rope in favour of the respondent Nos.1 and 2, this time, within a short span, they will take actual and physical possession of 32 Acres of land in question from the respondent No.2 and 78 Acres of land from the respondent No.1.

41. The petition is allowed. Rule is made absolute. Each of the respondent shall pay cost of Rs.10,000=00 (Rupees Ten Thousand only) to the State Government.

(R.S. GARG, J.)

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